

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

CEDAR CHEMICAL CORPORATION and
VICKSBURG CHEMICAL COMPANY,

Case Nos. 02-11039 (SMB) and
02-11040 (SMB)

Debtors.

Jointly Administered

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**STIPULATION AND ORDER AUTHORIZING ABANDONMENT OF WEST HELENA
MANUFACTURING FACILITY AND VICKSBURG MANUFACTURING
FACILITY AND GRANTING RELATED RELIEF**
(A&F No. 031)

WHEREAS on March 8, 2002 (the "**Petition Date**"), Cedar Chemical Corporation ("**Cedar**") and Vicksburg Chemical Company ("**Vicksburg**") (collectively the "**Debtors**") each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the Southern District of New York (the "**Court**");

WHEREAS Cedar owns certain lots, pieces, tracts or parcels of land located at or near 49 Phillips Road 311 in West Helena, Arkansas, more particularly described in **Exhibit A** hereto, along with all buildings, structures, improvements, facilities, equipment, fixtures, and other tangible chattels and articles of tangible personal property thereon, therein or thereunder except for such equipment and the like as have been leased by Vicksburg or otherwise owned by other parties (the "**West Helena Facility**");

9351967



IMANAGE:60801.8

WHEREAS Vicksburg owns certain lots, pieces, tracts or parcels of land located at or near 4280 Rifle Range Road in Vicksburg, Mississippi, along with all buildings, structures, improvements, facilities, equipment, fixtures, and other tangible chattels and articles of tangible personal property thereon, therein or thereunder except for such equipment and the like as have been leased by Vicksburg or otherwise owned by other parties (the **"Vicksburg Facility,"** the term **"Vicksburg Facility"** includes all real property and all buildings, structures, improvements, facilities, equipment, fixtures, and other tangible chattels and articles of tangible personal property owned by Vicksburg, and not merely leased by Vicksburg or otherwise owned by other parties, lying within Warren County, Mississippi);

WHEREAS on August 29, 2002 the Debtors filed a motion (the **"Motion"**) pursuant to sections 105(a) and 554(a) of the Bankruptcy Code seeking an order authorizing the abandonment by Cedar of the West Helena Facility and the abandonment by Vicksburg of the Vicksburg Facility and granting related relief;

WHEREAS the Court signed an order dated September 4, 2002 scheduling a hearing on the Motion (the **"Scheduling Order"**);

WHEREAS a statement in support of the Motion was filed by JPMorgan Chase Bank, as agent (the **"Agent"**) to the pre-petition secured lenders (the **"Secured Lenders"**), as listed under a certain Credit Agreement dated as of November 3, 1995, as amended, supplemented or otherwise modified, among Cedar, the Secured Lenders and the Agent (to avoid doubt, "Secured Lenders" does not include the Debtors, any affiliate of the Debtors, Trans Resources Inc., and Arie Genger);

WHEREAS the Arkansas Department of Environmental Quality (the **"ADEQ"**), the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality

(collectively, the "MDEQ") and the United States on behalf of the Environmental Protection Agency (the "EPA") (together with the ADEQ and the MDEQ the "Agencies" and each individually an "Agency"), and Harcros Chemicals Inc. each filed objections to the Motion;

WHEREAS the Agent and the Debtors filed a joint reply to the objections of the Agencies;

WHEREAS on or about September 26, 2002, the MDEQ issued Order No. 4486-02 purporting, among other things, to enjoin Vicksburg from transferring the Vicksburg Facility to another party without complying with Debtors' environmental permits.

WHEREAS good and sufficient notice of the Motion has been provided by the Debtors in accordance with the terms of the Scheduling Order;

WHEREAS a hearing on the Motion was held on September 25, 2002; and an evidentiary hearing on the Motion was held on October 7, 2002 (the "Evidentiary Hearing");

WHEREAS the West Helena Facility and the Vicksburg Facility (collectively, the "Facilities") are of inconsequential value and benefit to the estates of the Debtors and that such estates lack sufficient unencumbered assets with which to continue the maintenance, management and oversight of the Facilities;

WHEREAS, the Debtors have cooperated with the Agencies in the transition of the Facilities prior to their proposed abandonment;

WHEREAS the Debtors, the Agencies and the Agent (on behalf of the Secured Lenders) agree to compromise and resolve the various objections to the Motion as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties, subject to approval by the Court, as follows, and upon approval by the Court, it is hereby ORDERED that:

1. The Court has jurisdiction to hear and consider the Motion pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157 and to grant the relief requested therein.
2. This is a core proceeding under 28 U.S.C. § 157(b).
3. Good and sufficient notice of the Motion, the proposed abandonment of the Facilities and of the hearings scheduled thereon has been provided and any other requirement for notice be, and hereby is, dispensed with.
4. The Motion, as modified and conditioned herein, is hereby granted.
5. The Facilities are of inconsequential value and benefit to the estates of the Debtors and such estates lack sufficient unencumbered assets with which to continue the maintenance, management, and oversight of the Facilities.
6. All requirements of section 554(a) of the Bankruptcy Code for the abandonment of the Facilities have been satisfied and sufficient circumstances exist in these cases to justify the approval of such abandonment, as conditioned herein.
7. The Facilities are hereby abandoned to the pre-petition Debtors effective 11:59 p.m. on October 14, 2002 (the “**Effective Time**”). The West Helena Facility shall be deemed abandoned to the Cedar non-bankruptcy estate and the Vicksburg Facility shall be deemed abandoned to the Vicksburg non-bankruptcy estate.
8. The Debtors and their respective officers, employees, directors, the pre-petition Debtors’ officers, employees and directors and Marotta Gund Budd & Dzera LLC and any of its employees

(collectively, "MGB") shall have no obligation for the management or operation of the Facilities subsequent to the Effective Time.

9. The Debtors and the officers, employees, agents and directors of the Debtors and pre-petition Debtors (but solely in their capacity as officers, employees, agents or directors of the Debtors or pre-petition Debtors) shall be free of any liability for any occurrence or event with respect to (i) the Vicksburg Facility occurring subsequent to the Effective Time and (ii) the West Helena Facility occurring subsequent to 5:00 p.m. Eastern Standard Time on October 18, 2002 arising from the abandonment.

10. The United States, on behalf of the EPA, covenants not to sue the officers, employees, and directors of the Debtors and pre-petition Debtors (but solely in their capacity as officers, employees, or directors of the Debtors or pre-petition Debtors) or MGB for civil liability with respect to the Facilities for any cause of action or other claim for relief asserting environmental liability pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (42 U.S.C. § 1251 et seq.) or any state statute, including any regulations promulgated thereunder, for any occurrence or event with respect to the Facilities occurring subsequent to the Effective Time, provided however that this covenant not to sue shall not apply with respect to any affirmative acts of operation or disposal by such persons with respect to the Facilities occurring after the abandonment authorized herein. This covenant not to sue does not pertain to any matters other than those specified in this paragraph.

11. In consideration for the Agent's agreement to allow the Debtors to use an additional amount of cash collateral up to \$10,000 to continue the current environmental monitoring and oversight of the West Helena Facility until 5:00 pm Eastern Standard Time on Friday, October 18, 2002 (after which time the

ADEQ or its agent will enter upon the site and assure continued environmental monitoring and oversight of the West Helena Facility), the ADEQ hereby and forever discharges, releases and covenants not to sue, to take any other civil judicial or administrative action (including for injunctive relief) against, or to seek any reimbursement of past or future response costs against, the Agent or any of the Secured Lenders in respect of any hazardous substances, pollutants, contaminants or other environmental conditions, present or existing on or under, or emanating from, the West Helena Facility from the beginning or time until 5:00 pm Eastern Standard Time on Friday, October 18, 2002, including, without limitation, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), the Clean Air Act (42 U.S.C. Sections 7401 et seq.), the Clean Water Act (42 U.S.C. Sections 1251 et seq.), and Titles 8 and 15 of the Arkansas Code, in each case as amended and including any regulations promulgated thereunder. This Stipulation and Order settles and resolves, without the admission or adjudication of any issue of fact or law, the Agent's and each of the Secured Lenders' potential liability to the ADEQ, with respect to all matters addressed herein, and the Agent and each of the Secured Lenders shall be entitled to protection against contribution claims to the maximum extent provided pursuant to 42 U.S.C. Section 9613(f)(2).

12. After the Effective Time, the EPA and ADEQ, and their agents, shall at all times have the right to access the West Helena Facility for purposes of continuing the operation of the ponds and wastewater systems, as the Agencies deem appropriate, conducting investigations relating to contamination at or near the West Helena Facility, obtaining samples, assessing the need for, planning, or implementing additional response measures, or performing any and all removal or remedial activities, corrective actions

or response measures. Debtors agree to request that ENSAFE provide ADEQ copies of any documents generated, collected or otherwise in the possession of ENSAFE that relate to the West Helena Facility.

13. The Debtors are authorized to cancel any insurance policies pertaining to the Facilities as of the Effective Time, except to the extent the premiums for such insurance coverage have been paid in full and the Debtors would not be entitled to a refund, if such insurance coverage was canceled.

14. After the Effective Time, the EPA and MDEQ, and their agents, shall at all times have the right to access the Vicksburg Facility for purposes of continuing the operation of the ponds and wastewater systems, as the Agencies deem appropriate, conducting investigations relating to contamination at or near the Vicksburg Facility, obtaining samples, assessing the need for, planning, or implementing additional response measures, or performing any and all removal or remedial activities, corrective actions or response measures. This provision shall not act in derogation of Miss. Code Ann. § 49-17-21 or pre-existing state permit conditions with regard to access.

15. With the consent of the Secured Lenders, all mortgages, liens and other security interests held by the Secured Lenders in the Facilities or any part thereof, including the land and any buildings, structures, improvements, facilities, equipment, fixtures, and other tangible chattels and articles of tangible personal property thereon, therein or thereunder (the “**Secured Lender Liens**”), shall be, and are hereby unconditionally and irrevocably deemed released, discharged and terminated as of the Effective Time and the abandonment of the West Helena Facility to the Cedar non-bankruptcy estate and the abandonment of the Vicksburg Facility to the Vicksburg non-bankruptcy estate shall, in each case, be free and clear of the Secured Lender Liens, and this Stipulation and Order shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, administrative

agencies, governmental departments, secretaries of state, federal, state and local officials and all other persons and entities who may be required, by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments.

16. Upon written request by the ADEQ, the Cedar non-bankruptcy estate shall convey title to the West Helena Facility or parts thereof to any entity identified by the ADEQ, and upon written request by the MDEQ, the Vicksburg non-bankruptcy estate shall convey title to the Vicksburg Facility or parts thereof to any entity identified by the MDEQ. Any consideration received for the transfer of the respective Facilities or parts thereof shall be applied to the environmental cleanup of the respective Facilities and shall be treated as a contribution by the Debtors to such cleanup. Any entity to whom the Facilities or any parts thereof are transferred shall be given a copy of the Stipulation and Order and shall be bound by its terms.

17. Absent an objection, the leases for personal property located at the Facilities (the "Facility Leases"), a schedule of certain of such leases is annexed hereto as Schedule I, shall be deemed rejected pursuant to section 365(a) of the Bankruptcy Code, as of one day subsequent to the date that the Debtors provide the lessors under the Facility Leases (the "Lessors") with notice by overnight delivery of such proposed rejection. Such notice also shall provide (i) for a ten-day period within which such Lessors may file an objection to such rejection and (ii) that the Lessors should immediately contact Mr. Philip Gund, the Debtors' "Restructuring Officer" or a person designated by Mr. Gund to arrange for a pick-up of the personal property under the Facility Leases.

18. MDEQ, by its agreement to this Stipulation and Order, does not waive any defenses created by Miss. Code Ann. § 11-46-9, nor accept any liabilities not otherwise imposed by operation of law.

19. The Debtors waive and relinquish their interest, if any, in (i) Trustmark National Bank Trust and Asset Management Account No. 35-L903-00-8; (ii) Trust Agreement dated October 6, 1982 between Vertac Chemical Corporation, as Grantor and First National Bank, as Trustee (the "EPA Agreement"); (iii) Trust Agreement dated October 6, 1982 between Vertac Chemical Corporation, as Grantor and First National Bank, as Trustee (the "Mississippi Department of Natural Resources Agreement"); and (iv) Amendment dated June 27, 1986 to the Mississippi Department of Natural Resources Agreement.

20. Each signatory to this Stipulation and Order certifies that he or she is authorized to enter into the terms and conditions of this Stipulation and Order and to bind legally the party represented by him or her except that the execution of this Stipulation and Order by the Assistant Attorney General is required with respect to the United States.

21. This Stipulation and Order shall be deemed a "**Final Order**" when (i) the time to appeal or seek review, rehearing, reargument or certiorari has expired and no stay of appeal is in effect or petition for review, rehearing, reargument or certiorari proceeding is pending; or (ii) an appeal of this Stipulation and Order has been affirmed and the time for further appeal has expired.

22. As a contribution to the environmental cleanup of the Facilities, the Debtors shall pay \$200,000 to the ADEQ and \$200,000 to the MDEQ from the "proceeds of any sale by the Debtors of the EPA Registrations" deposited into "Avoidance Realization Account" as provided in paragraph 19 of the "Final Order (i) Authorizing Use of Cash Collateral (ii) Providing for Adequate Protection and (iii) Granting Related Relief dated August 21, 2002 (the "Final Cash Collateral Order"), notwithstanding any provisions in the Final Cash Collateral Order to the contrary, but only to the extent the ADEQ and MDEQ

are granted allowed administrative claims in those amounts under section 503(b) of the Bankruptcy Code. The MDEQ and ADEQ shall be entitled to such an administrative priority to the extent that they can demonstrate that such expenses were incurred with respect to the Facilities and were consistent with applicable environmental laws. The ADEQ and MDEQ agree that the Debtors or any chapter 7 trustee in the Debtors' cases will have no administrative expense liability to the MDEQ and ADEQ in excess of the \$200,000 claims provided herein. Solely in connection with the confirmation of a chapter 11 plan, the Agencies agree not to object to a plan on the basis of section 1129(a) (9)(A) of the Bankruptcy Code. The abandonment of the Facilities and payment of \$400,000 shall be without prejudice to additional administrative expenses or general unsecured claims of the United States, except to the extent that the United States asserts a claim as an assignee of ADEQ or MDEQ. Nothing in this Stipulation and Order shall waive or prejudice any right of any party to object to additional claims by the EPA on any ground other than a lack of an entitlement to an administrative priority based on the abandonment of the Facilities. The United States may perfect a lien for its costs with respect to the Facilities on the abandoned property to the extent permitted by applicable law.

23. The Debtors are authorized to transfer or otherwise make available all books and records relating to the Vicksburg Facility and/or the West Helena Facility (the "Facility Books and Records") to any Agency making such request without further order of the Court. Subject to further order of the Court, the Debtors shall secure and preserve the Facility Books and Records until such time as they are transferred to an Agency and provide each of the Agencies at least ten (10) days notice of their intention to destroy or discard any of the Facility Books and Records or transfer such Facility Books and Records to one of the Agencies.

24. The Debtors are hereby authorized to execute and deliver any instrument and perform any other act that is necessary in order to effectuate the purposes of this Stipulation and Order.

25. This Court shall retain jurisdiction to hear and determine any matter arising from or relating to this Stipulation and Order.

Dated: October 18, 2002

FOR THE DEBTORS

/S/ _____
Yehuda Yoked, President
Cedar Chemical Corporation

/S/ _____
Yehuda Yoked, President
Vicksburg Chemical Company

AGREED as to paragraphs 1 through 7 (inclusively), 11, 15, 20, 21, 24 and 25. NO OBJECTION as to the remaining paragraphs.

Dated: October 18, 2002

FOR THE AGENT, ON BEHALF OF
THE SECURED LENDERS

/S/ _____

Benjamin Kaminetzky (BK 7741)
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017

Counsel for JPMorgan Chase Bank, as
Agent for the Secured Lenders

Except as to paragraph 9, and subject to the approval of the Assistant Attorney General:

Dated: New York, New York
October 17, 2002

JAMES B. COMEY
United States Attorney for the
Southern District of New York
Attorney for the United States

By: /S/_____
David J. Kennedy (DK-8307)
Assistant United States Attorney
100 Church Street - 19th Floor
New York, New York 10007
Temp. Tel: (718) 422-5649
Temp. Fax: (718) 422-1789

Except as to paragraph 9:

Dated: Washington, DC
October __, 2002

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044 - 7611

Except as to paragraph 9, and subject to the approval of the Assistant Attorney General:

Dated: Atlanta, Georgia
October 18, 2002

Region 4

/S/_____
J. I. PALMER, Jr.
Regional Administrator
U.S. Environmental Protection Agency,
61 Forsyth Street, S.E.
Atlanta, Georgia 30303
(404) 562-9674; telefax: (404) 562-9664

Except as to paragraph 9, and subject to the approval of the Assistant Attorney General:

Dated: Dallas, Texas
October 17, 2002

/S/ _____
MARK A. PEYCKE
Chief, Superfund Branch
Office of Regional Counsel, Region 6
1445 Ross Avenue, Ste. 1200
Dallas, Texas 75202
(214) 665-3159; telefax: (214) 665-6460

Dated: October 17, 2002

FOR THE MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY AND THE
MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

/S/ _____
Charles H. Chisolm
Executive Director

Dated: October 17, 2002

/S/ _____
Chuck D. Barlow
General Counsel

Dated: October 18, 2002

FOR THE ARKANSAS DEPARTMENT
OF ENVIRONMENTAL QUALITY

/S/ _____

Marcus Devine

Director

IT IS SO ORDERED:

Dated: New York, New York
October 18, 2002

/s/ STUART M. BERNSTEIN
Chief United States Bankruptcy Judge

Schedule I
Personal Property Leases of the Debtors at the Facilities

A. West Helena Facility Leases

Equipment	Contact	Account #	Monthly Payment
Fork Lift SN 5AM09021	Grady Jones Co, Inc. 901-365-8830	112725	659.12
Fork Lift	Grady Jones Co, Inc. 901-365-8830	112725	400.00
Fork Lift	Citicorp Del-Lease, Inc. 800-227-6766		1,075.68
Phone System	Avaya Financial Services 800-5276-9876 X7401	S623553	1,385.95
Xerox 5828 Copier sn 2 WU-063639	Xerox Capital Services, LLC	953303484	126.70
Xerox 5828 Copier sn 2 WU-070028	Xerox Capital Services, LLC	958867558	219.30

B. Vicksburg Facility Leases

Equipment	Contact	Account #	Monthly Payment
Locomotive	Birmingham Rail & Locomotive Company		5,000.00
Office F&F	Steelcase Financial Service		1,540.94
2001 Tiago Motor Home	Americal Lease Plans, Inc.		1,238.26
Hyster Forklift Ser# H177B26045Y	NMHG Financial Services		414.00

Equipment	Contact	Account #	Monthly Payment
Hyster Forklift Ser# H177B31403Y	De Lage Landen Financial Services, Inc. 800-736-0220	143257	488.99
Hyster Forklift Ser# H177B31404Y	De Lage Landen Financial Services, Inc. 800-736-0220	143257	488.99

Exhibit A

Description of West Helena Facility

EXHIBIT A

Description of the Land

Commencing at the Southeast corner of Section 14, T2S, R4E, thence West 3517.8 feet; thence North 1980.0 feet; thence N 35 degrees, 34' W 1122.6 feet to the East right-of-way of State Highway No 242; thence N 54 degrees 12' E 1553.1 feet along said East right-of-way of State Highway No. 242 to the Northerly line of a Dedicated Street and the point of beginning; thence, from the point of the beginning, S39 degrees 58' E 1341.7 feet along the Northerly line of said Dedicated Street; thence N 28 degrees 42' E 827.9 feet; thence S 55 degrees 45' E 806.3 feet; thence N 28 degrees 42' E 197.6 feet to the Southerly line of a 50 foot Easement recorded in Book 506, Page 462, of the Official Records of Phillips County, Arkansas; thence N 53 degrees 29' W 810.0 feet along the Southerly line of said Easement recorded in Book 506, Page 462, to the Westerly line thereof; thence N 28 degrees 42' E 50.5 feet along the Westerly line of said Easement recorded in Book 506, Page 462, to the Southerly right-of-way of the Missouri Pacific Railroad; thence N 53 degrees 29' W 919.5 feet along said Southerly right-of-way of the Missouri Pacific Railroad to the East right-of-way of State Highway No. 242; thence S 54 degrees 12' W 822.6 feet, more or less, along said East right-of-way of State Highway No. 242 to the point of beginning; and

Commencing at the Southeast corner of Section 14, Township 2 South Range 4 East; thence West 3517.8 feet; thence North 1980 feet; thence North 35 degrees 34' West 1122.6 feet to the Easterly right of way of State Highway No. 242; thence North 54 degrees 12' East 790.52 feet along said Easterly right of way to the point of beginning; thence, from the point of beginning, continue North 54 degrees 12' East 702.58 feet to the Southerly right of way of an industrial road; thence South 39 degrees 58' East 1243.29 feet along said Southerly right of way to the Westerly right of way of a proposed road; thence South 54 degrees 12' West 702.58 feet along said Westerly right of way; thence of North 39 degrees 58' West 1243.29 feet to the point of beginning.